SUPR

LIBRARY
SUPREME COURT, U. S.

FEB 7 1969

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1968

No. 752

MILTON FRANK ALLEN PUBLICATIONS, INC.
Petitioner,

vs.

GEORGIA ASSOCIATION OF PETROLEUM RETAILERS, INC.
Respondent.

PETITION FOR REHEARING OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

LYNWOOD A. MADDOX
Counsel for Petitioner
1606 First Federal Building
Atlanta, Georgia 30303

DANIEL C. B. LEVY
1606 First Federal Building
Atlanta, Georgia 30303
Of Counsel

IN THE

Supreme Court of the United States

OCTOBER TERM 1968

NO. 752

MILTON FRANK ALLEN PUBLICATIONS, INC.
Petitioner

vs.

GEORGIA ASSOCIATION OF PETROLEUM RETAILERS, INC.
Respondent

PETITION FOR REHEARING OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

This Court denied the Petition for Writ of Certiorari To The Supreme Court of Georgia on January 13, 1969.

Petitioner respectfully requests and urges the Court to reconsider the aforesaid denial and in support of such request submits the following for the Court's consideration.

Code of Georgia, Title 22, Section 1864, provides that the management and "full control over the affairs of the corporation" and "the exercise of all its corporate powers" is vested in the board of directors, subject only to the *limitations* provided in (a) this Chapter, i.e., the Corporation Code, or (b) the charter or (c) any amendments to the charter or (d) the by-laws of the corporation.

Code of Georgia, Title 22, Section 1828(h), provides that a corporation shall have "Incidental powers. To do all and everything necessary and proper for the accomplishment of the objects enumerated in the charter or any amendments thereof or necessary or incidental to the protection and benefit of the corporation and in general to carry on any lawful business necessary or incidental to the attainment of the objects of the corporation."

Code of Georgia, Title 22, Section 701, provides that "Corporations created under Chapter 22-3 may exercise all corporate powers necessary to the purpose of their organization, but shall make no contract, or purchase or hold any property of any kind, except such as is necessary in legitimately carrying into effect such purpose...."

Pursuant to the above described corporate powers the Respondent corporation adopted the amendment to the by-laws set out on page ten of the Petition for Certiorari and entered into the membership solicitation contract which is the subject matter of this proceeding. Notwithstanding the Respondent's Reply Brief, there has not been any showing that this amendment was not effective to accomplish its intended purpose.

If the total abnegation by the Supreme Court of Georgia of these corporation code provisions is not the denial of

due process as claimed in the Petition herein, then that Court is free in any situation where it has a visceral dislike for a given state of facts which may be eminently legal, just to ignore the legislative provisions and reach an *ad hoc* decision more to its liking. Without considering the chaos and imbalance that would necessarily follow in our trichotomous constitutional and legal system from such a "freedom" if sustained, as applied to the instant situation, Petitioner has been singled out, for reasons never explained in the State court, to be the one who is not entitled to the provileges and protection of the above-quoted code sections. This denial of due process has directly confiscated Petitioner's property right in a contract entered into in good faith by the parties a generation ago and performed by both parties in good faith throughout these years until Respondent deliberately precipitated this litigation.

CONCLUSION

Petitioner therefore prays that the Court reconsider its previous ruling and grant the Writ of Certiorari.

Respectfully submitted,

LYNWOOD A. MADDOX
Counsel for the Petitioner

DANIEL C. B. LEVY
Of Counsel

CERTIFICATE

Copies mailed to opposing Counsel as per Certificate of Service on file.